IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11782 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARIOM RAMLAL KOLI (BHAIYA)

Versus

THE COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 11782 of 2003

MR SATISH R PATEL for Petitioner No. 1

MS PANCHAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/11/2003

ORAL JUDGEMENT

By way of filing this Special Civil Application, the petitioner has challenged the order of detention

passed by the Police Commissioner, Ahmedabad City, on 24th June, 2003 in exercise of powers under sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner as a "bootlegger" within the meaning of PASA Act and directing the detention of the petitioner. In pursuance of the said order the petitioner came to be detained in custody on 24th June, 2003.

2. The grounds served upon the petitioner and as placed on record clearly indicate that the detaining authority took into consideration the fact of registration of three crimes against the petitioner on 4th April, 2003, 6th February, 2003 and 21st June, 2003 whereby it is alleged that some quantity of country liquor was found in possession of the petitioner. In addition to this, the detaining authority has also relied upon two in-camera statements as recorded by the by sponsoring authority on 21st June, 2003 and as verified by the detaining authority on 23rd June, 2003, revealing incidents occurred on 11th May, 2003 and 17th May, 2003. From the above material, the order, impugned in this petition, came to be passed by the detaining authority.

3. Learned Advocate Mr S.R. Patel for the petitioner and learned A.G.P. Ms Panchal for the respondents were heard at length. The affidavit-in-reply as placed on record by the learned AGP Ms Panchal of the detaining authority is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner and controverted by the AGP, it appears that the matter can be disposed of on the ground whether on the facts of the case it can be said that the activities of the petitioner were prejudicial to the maintenance of public order. Examining the case on this aspect, it transpires that firstly, the detaining authority placed reliance on the fact that three cases under the Bombay Prohibition Act came to be registered against the petitioner. However, this fact would not help the detaining authority to form a subjective satisfaction that the registration of crimes under the Bombay Prohibition Act ipso factor amounts to the activities on part of the petitioner prejudicial to the maintenance of public order. The registration of crimes under the Bombay Prohibition Act can be categorised as the activities which can be taken care of by maintenance of law and order but then the detaining authority also relied upon two in-camera statements, as recorded by the sponsoring authority. Copies of the statements, as

served upon the petitioner, are placed on record. As per the statements of the witnesses they refer to the incidents occurred on 11th May, 2003 and 17th May, 2003. So far as incident occurred on 11th May, 2003 is concerned, it is stated by the witness that on that date at about 20.00 hours when he was at his house, the petitioner and his associates visited the house of the witness in auto-rickshaw. The witness was asked to keep two big packets of country liquor in his house. The witness refused to accede to the demand of the petitioner and on such refusal the petitioner and his associates have got excited and started abusing and beating the petitioner after dragging him out of the house and in public. This witness shouted for the help and hearing the shouts the persons gathered around the place of the incident. On seeing this, the petitioner took out big knife from his pocket and aimed it at the crowd and rushed towards the crowd and ordered the crowd to go away from the place. The crowd therefore dispersed and the persons started running away from the place of the incident. Terror and fear was created. The traffic was disrupted. Due to the fear of the petitioner the witnesses did not make any complaint against him. While in another incident which occurred on 17th May, 2003 at about 15.00 hours, as stated by the witness, when he was standing near Pangadh Society the petitioner and his one of the associates approached the witness and asked the witness as to why he was standing there and that the witness was informant of the police and on saying so the petitioner started beating the witness. The witness denied the same. On beating by the petitioner, the witness shouted for help and passersby and other persons of the locality were formed in a crowd near the place of the incident. At that juncture, took out a big knife from his pocket and rushed towards the crowd to give knife blows. On this account, due to fear the crowd was dispersed and the persons gathered run away. The traffic on the public road was disrupted and the nearby shops were closed. An atmosphere of fear and terror was created by the petitioner. Due to fear the witness also ran away from the place of the incident. From the above material, the detaining authority came to the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order.

5 Whether given activity of a person is in breach of the public order or in breach of law and order is a question of fact to be adjudged from the circumstances of each case. It is the degree and extent of the reach of objectionable activity upon the society, which is vital for considering the question whether a man has committed

only a breach of law and order or has acted in a manner likely to cause disturbance to the public order. It is the potentiality of the act to disturb the even tempo of life of the community makes it prejudicial to the maintenance of public order. Therefore, whenever an order of detention is questioned, the courts apply this test to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of being prejudicial to the public order or belong to the category of being prejudicial to the law and order. Hence, in each case the length, magnitude and intensity including after-effects of the activities has to be judged with reference to whether the activities are prejudicial to the maintenance of public order.

6 Reverting back to the facts of the present case, on going through the statements minutely and evaluating the same in totality, the statements reveal individual disputes. It is not alleged in the statements that the petitioner was of such nature he used to create terror and fear in the society at large or by his activities a section of society was adversely affected nor it is alleged that even tempo of life by the activities of the petitioner was affected. If the statements are scrutinised in substance it reveals that a particular individual was given abuses once for concealing the illegal liquor and secondly, on suspicion that the witness was informing the police the quarrel took place. As a sequel of these quarrels the witnesses have stated that the petitioner and his associates attempted to threaten the crowd. These incidents are not so intense as to be classified as a disturbance to the public order and therefore judging the activity from its length, magnitude and intensity it could be said that at the most the activities can be classified to be prejudicial to the law and order and not the public order. In this view of the matter, the subjective satisfaction of the detaining authority is vitiated on the ground that the material before the detaining authority did not disclose that the activities of the petitioner were prejudicial to the maintenance of public order and he was required to be detained as a bootlegger. The order impugned in this Special Civil Application is required to be quashed and set aside on this ground alone.

7. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 24.06.2003 under Section 3(1) of the PASA Act against the petitioner is quashed

and set aside. The petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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